

TERMED

**U.S. District Court
District of Colorado (Denver)
CIVIL DOCKET FOR CASE #: 1:10-cv-01895-RPM**

Agazio et al v. Commerce City, Colorado et al
Assigned to: Judge Richard P. Matsch
Cause: 42:1983 Civil Rights Act

Date Filed: 08/09/2010
Date Terminated: 07/12/2012
Jury Demand: Both
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Frank Agazio

represented by **Jay Wayne Swearingen**
Animal Law Center, The
4465 Kipling Street
#108
Wheat Ridge, CO 80033
303-322-4355
Fax: 303-322-4354
Email: jws@theanimallawcenter.com
ATTORNEY TO BE NOTICED

Jennifer Reba Edwards
Animal Law Center, The
4465 Kipling Street
#108
Wheat Ridge, CO 80033
303-322-4355
Fax: 303-322-4354
Email: jre@theanimallawcenter.com
ATTORNEY TO BE NOTICED

Juliet R. Piccone
Juliet R. Piccone, Attorney at Law
P.O. Box 472364
Aurora, CO 80047
720-535-6246
Email: julietpiccone@gmail.com
ATTORNEY TO BE NOTICED

Plaintiff

Julia Agazio

represented by **Jay Wayne Swearingen**
(See above for address)
ATTORNEY TO BE NOTICED

Jennifer Reba Edwards
(See above for address)
ATTORNEY TO BE NOTICED

Juliet R. Piccone
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Maria Agazio
a minor, by and through her next friends
Frank and Julia Agazio

represented by **Jay Wayne Swearingen**
(See above for address)
ATTORNEY TO BE NOTICED

Jennifer Reba Edwards
(See above for address)
ATTORNEY TO BE NOTICED

Juliet R. Piccone
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Commerce City, Colorado
a municipal corporation
TERMINATED: 03/14/2012

represented by **Kate Lindsay McDonald**
McConaughy & Sarkissian, P.C.
8310 South Valley Highway
The Pointe at Inverness
Suite 250
Englewood, CO 80112
303-649-0999
Fax: 303-649-0990
Email: kmcdonald@mslawpc.com
ATTORNEY TO BE NOTICED

Steven Jay Dawes , Sr.
Steven J. Dawes LLC, The Law Office of
100 Fillmore Street
Suite 500
Denver, CO 80206
303-720-7541
Email: steve@sdaweslaw.com
ATTORNEY TO BE NOTICED

Defendant

Commerce City Police Department*TERMINATED: 01/14/2011***Defendant****Commerce City Animal Control***TERMINATED: 01/14/2011***Defendant****Suzanne (I) Barber***in her individual capacity*represented by **Steven Jay Dawes , Sr.**

(See above for address)

ATTORNEY TO BE NOTICEDrepresented by **Steven Jay Dawes , Sr.**

(See above for address)

ATTORNEY TO BE NOTICEDrepresented by **Kate Lindsay McDonald**

(See above for address)

ATTORNEY TO BE NOTICED**Steven Jay Dawes , Sr.**

(See above for address)

ATTORNEY TO BE NOTICED**Defendant****Suzanne Barber***Commerce City Police Officer (CC2746),
in her official capacity*represented by **Kate Lindsay McDonald**

(See above for address)

ATTORNEY TO BE NOTICED**Steven Jay Dawes , Sr.**

(See above for address)

ATTORNEY TO BE NOTICED**Defendant****Kendall (I) Grove***in his individual capacity
TERMINATED: 03/14/2012*represented by **Kate Lindsay McDonald**

(See above for address)

ATTORNEY TO BE NOTICED**Steven Jay Dawes , Sr.**

(See above for address)

ATTORNEY TO BE NOTICED**Defendant****Kendall Grove***Commerce City Police Officer (CC1088),
in his official capacity
TERMINATED: 03/14/2012*represented by **Kate Lindsay McDonald**

(See above for address)

ATTORNEY TO BE NOTICED**Steven Jay Dawes , Sr.**

(See above for address)

ATTORNEY TO BE NOTICED**Defendant**

**Adams County Communication Center,
Inc.***TERMINATED: 12/07/2010*represented by **Mark C. Overturf**

Overturf McGath Hull & Doherty, P.C.
 625 East 16th Avenue
 #100
 Denver, CO 80203
 303-860-2848
 Fax: 303-860-2869
 Email: mco@omhdllaw.com
ATTORNEY TO BE NOTICED

Mary Kathryn Strauss

Overturf McGath Hull & Doherty, P.C.
 625 East 16th Avenue
 #100
 Denver, CO 80203
 303-860-2848
 Fax: 303-860-2869
 Email: ks@omhdllaw.com
ATTORNEY TO BE NOTICED

Date Filed	#	clear	Docket Text
08/09/2010	1	<input type="checkbox"/> 1.33MB	COMPLAINT and Jury Demand against Adams County Communication Center, Inc., Suzanne Barber, Suzanne (I) Barber, Commerce City Animal Control, Commerce City Police Department, Commerce City, Colorado, Kendall Grove, Kendall (I) Grove (Filing fee \$ 350, Receipt Number 30271) Summons Issued, filed by Julia Agazio, Frank Agazio, Maria Agazio. (Attachments: # 1 Civil Cover Sheet, # 2 Receipt)(jak,) (Entered: 08/09/2010)
09/03/2010	2	<input type="checkbox"/> 137.80KB	AMENDED COMPLAINT AND JURY DEMAND by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (Swearingen, Jay) (Entered: 09/03/2010)
09/28/2010	3	<input type="checkbox"/> 23.22KB	NOTICE of Entry of Appearance by Steven Jay Dawes on behalf of Suzanne Barber, Suzanne (I) Barber, Commerce City Animal Control, Commerce City Police Department, Commerce City, Colorado, Kendall Grove, Kendall (I) Grove (Dawes, Steven) (Entered: 09/28/2010)
09/28/2010	4	<input type="checkbox"/> 25.44KB	STIPULATION for Extension of Time <i>Under D.C.COLOLCivR 6.1A</i> by Defendants Suzanne Barber, Suzanne (I) Barber, Commerce City Animal Control, Commerce City Police Department, Commerce City, Colorado, Kendall Grove, Kendall (I) Grove. (Dawes, Steven) (Entered: 09/28/2010)
09/29/2010	5		Utility Setting/Resetting Deadlines/Hearings: Suzanne Barber answer due 10/22/2010; Suzanne (I) Barber answer due 10/22/2010; Commerce City Animal Control answer due 10/22/2010; Commerce City Police Department answer due 10/22/2010; Commerce City, Colorado answer due 10/22/2010; Kendall Grove answer due 10/22/2010; Kendall (I) Grove answer due 10/22/2010. Pursuant to the Stipulation filed on 09/28/10. TEXT ONLY

			ENTRY - NO DOCUMENT ATTACHED (jjh,) (Entered: 09/29/2010)
10/14/2010	6	<input type="checkbox"/> 13.62KB	NOTICE of Entry of Appearance by Mark C. Overturf on behalf of Adams County Communication Center, Inc. (Overturf, Mark) (Entered: 10/14/2010)
10/20/2010	7	<input type="checkbox"/> 73.25KB	MOTION to Amend/Correct/Modify 2 Amended Document by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (Swearingen, Jay) (Entered: 10/20/2010)
10/20/2010	8	<input type="checkbox"/> 212.94KB	MOTION to Amend/Correct/Modify 2 Amended Document by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (Attachments: # 1 Second Amended Complaint)(Swearingen, Jay) (Entered: 10/20/2010)
10/21/2010	9	<input type="checkbox"/> 6.68KB	ORDER Granting 8 Motion for Leave to File Second Amended Complaint, signed by Judge Richard P. Matsch on 10/21/2010.(rpmcd) (Entered: 10/21/2010)
10/21/2010	10	<input type="checkbox"/> 82.46KB	(AMENDED) COMPLAINT and Jury Demand against Adams County Communication Center, Inc., Suzanne Barber, Suzanne (I) Barber, Commerce City Animal Control, Commerce City Police Department, Commerce City, Colorado, Kendall Grove, Kendall (I) Grove, filed by Julia Agazio, Frank Agazio, Maria Agazio.(jjh,) (Entered: 10/21/2010)
10/22/2010	11	<input type="checkbox"/> 76.13KB	ANSWER to 10 Amended Complaint, by Suzanne Barber, Suzanne (I) Barber, Commerce City Animal Control, Commerce City Police Department, Commerce City, Colorado, Kendall Grove, Kendall (I) Grove.(Dawes, Steven) (Entered: 10/22/2010)
11/02/2010	12	<input type="checkbox"/> 0.65MB	First MOTION to Dismiss <i>Pursuant to Fed.R.Civ.P. 12(b)(1)</i> , MOTION to Dismiss Party by Defendant Adams County Communication Center, Inc.. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B, # 3 Exhibit Exhibit C, # 4 Affidavit Affidavit of William T. Malone)(Overturf, Mark) (Entered: 11/02/2010)
11/22/2010	13	<input type="checkbox"/> 125.61KB	RESPONSE to 12 First MOTION to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) filed by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (Swearingen, Jay) Modified on 11/23/2010 to delete duplication (jjh,). (Entered: 11/22/2010)
12/06/2010	14	<input type="checkbox"/> 51.64KB	REPLY to Response to 12 First MOTION to Dismiss <i>Pursuant to Fed.R.Civ.P. 12(b)(1)</i> First MOTION to Dismiss <i>Pursuant to Fed.R.Civ.P. 12(b)(1)</i> MOTION to Dismiss Party filed by Defendant Adams County Communication Center, Inc.. (Overturf, Mark) (Entered: 12/06/2010)
12/06/2010	15	<input type="checkbox"/> 12.83KB	NOTICE of Entry of Appearance by Mary Kathryn Strauss on behalf of Adams County Communication Center, Inc. (Strauss, Mary) (Entered: 12/06/2010)
12/07/2010	16	<input type="checkbox"/> 8.03KB	ORDER: Defendant Adams County Communication Center, Inc., is dismissed from this civil action and the claim made against it is dismissed with prejudice re: 12 , signed by Judge Richard P. Matsch on 12/7/2010.(rpmcd) (Entered: 12/07/2010)
12/07/2010	17	<input type="checkbox"/> 10.75KB	ORDER Setting Scheduling Conference for 1/14/2011 at 03:00 PM in Conference Room and proposed order (original only) on paper, shall be

			submitted directly to chambers by 4:00 p.m. on January 6, 2011, signed by Judge Richard P. Matsch on 12/7/2010. (rpmcd) (Entered: 12/07/2010)
12/10/2010	18	<input type="checkbox"/> 29.17KB	Unopposed MOTION to Reset <i>Scheduling Conference</i> by Defendants Suzanne Barber, Suzanne (I) Barber, Commerce City Animal Control, Commerce City Police Department, Commerce City, Colorado, Kendall Grove, Kendall (I) Grove. (Dawes, Steven) (Entered: 12/10/2010)
12/13/2010	19	<input type="checkbox"/> 6.80KB	Minute ORDER Granting 18 Motion to Reset Scheduling Conference to 1/14/2011 at 04:00 PM in Conference Room, by Judge Richard P. Matsch on 12/13/2010.(rpmcd) (Entered: 12/13/2010)
12/17/2010	20	<input type="checkbox"/> 0.64MB	MOTION for Attorney Fees, MOTION for Costs by Defendant Adams County Communication Center, Inc.. (Attachments: # 1 Exhibit)(Strauss, Mary) (Entered: 12/17/2010)
01/06/2011	21	<input type="checkbox"/> 298.79KB	RESPONSE to 20 MOTION for Attorney Fees MOTION for Costs filed by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (Swearingen, Jay) (Entered: 01/06/2011)
01/14/2011	22	<input type="checkbox"/> 278.34KB	SCHEDULING ORDER: Discovery due by 8/31/2011. Dispositive Motions due by 9/15/2011. Signed by Judge Richard P. Matsch on 1/14/2011. (rpmcd) (Entered: 01/14/2011)
01/14/2011	23	<input type="checkbox"/> 10.77KB	Minute Entry - Courtroom Minutes Scheduling Conference held on 1/14/2011 before Judge Richard P. Matsch. ORDERED: Defendants Commerce City Police Department and Commerce City Animal Control are dismissed. Scheduling Order approved. (FTR: K. Terasaki) (rpmcd) (Entered: 01/18/2011)
01/20/2011	24	<input type="checkbox"/> 77.91KB	REPLY to Response to 20 MOTION for Attorney Fees MOTION for Costs filed by Defendant Adams County Communication Center, Inc.. (Strauss, Mary) (Entered: 01/20/2011)
02/03/2011	25	<input type="checkbox"/> 6.96KB	ORDER Awarding Fees to Adams County Communication Center, Inc. re: 20 . Pursuant to C.R.S. § 13-17-201, attorney's fees should be awarded in the amount of \$3,035.00 and the request for costs of \$22.24 for copy charges is denied as not recoverable under Fed.R.Civ.P. 54(d). Plaintiffs shall pay to Defendant Adams County Communication Center, Inc., attorney's fees in the amount of \$3,035.00, signed by Judge Richard P. Matsch on 2/3/2011.(rpmcd) (Entered: 02/03/2011)
03/30/2011	26	<input type="checkbox"/> 27.93KB	Joint MOTION to Amend/Correct/Modify 22 Scheduling Order by Defendants Suzanne Barber, Suzanne (I) Barber, Commerce City Animal Control, Commerce City Police Department, Commerce City, Colorado, Kendall Grove, Kendall (I) Grove. (Dawes, Steven) (Entered: 03/30/2011)
03/31/2011	27	<input type="checkbox"/> 7.63KB	ORDER Amending Scheduling Order re: 26 . See Order for Details by Judge Richard P. Matsch on 03/31/11.(jjh,) (Entered: 03/31/2011)
06/01/2011	28	<input type="checkbox"/> 74.99KB	Joint MOTION for Extension of Time to <i>Disclose Experts</i> by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio, Defendants Suzanne Barber, Suzanne (I) Barber, Commerce City, Colorado, Kendall Grove, Kendall (I) Grove.

			(Swearingen, Jay) (Entered: 06/01/2011)
06/01/2011	29	<input type="checkbox"/> 6.81KB	ORDER Granting 28 Parties' Joint Motion for Extension of Time for Expert Disclosures re: 22 . Plaintiffs' Expert Disclosures are due on or before July 1, 2011 and Defendants' Expert Disclosures are due on or before August 1, 2011, by Judge Richard P. Matsch on 6/1/2011.(rpmcd) (Entered: 06/01/2011)
08/25/2011	30	<input type="checkbox"/> 10.61KB	ORDER For Calendar Call set for 10/28/2011 at 08:00 AM in Courtroom A and counsel are to prepare a joint statement to be handed up when the case is called, by Judge Richard P. Matsch on 8/25/2011. (rpmcd) (Entered: 08/25/2011)
09/15/2011	31	<input type="checkbox"/> 1.54MB	MOTION to Dismiss <i>and in th Alternative Motion for Summary Judgment</i> by Defendants Suzanne Barber, Suzanne (I) Barber, Commerce City Animal Control, Commerce City Police Department, Commerce City, Colorado, Kendall Grove, Kendall (I) Grove. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B and Exhibit C, # 3 Exhibit Exhibit D)(Dawes, Steven) (Entered: 09/15/2011)
10/05/2011	32	<input type="checkbox"/> 228.97KB	Unopposed MOTION for Extension of Time to File Response/Reply as to 31 MOTION to Dismiss <i>and in th Alternative Motion for Summary Judgment</i> by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (Attachments: # 1 Proposed Order (PDF Only))(Swearingen, Jay) (Entered: 10/05/2011)
10/17/2011	33	<input type="checkbox"/> 115.93KB	Second MOTION for Extension of Time to File Response/Reply as to 31 MOTION to Dismiss and in th Alternative Motion for Summary Judgment by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (Swearingen, Jay) Modified on 10/18/2011 to delete duplicate text (jjh,). (Entered: 10/17/2011)
10/18/2011	34	<input type="checkbox"/> 6.74KB	ORDER Granting 33 Motion for Extension of Time to File Response re 31 to and including October 18, 2011, by Judge Richard P. Matsch on 10/18/2011.Terminating 32 Motion. (rpmcd) (Entered: 10/18/2011)
10/18/2011	35	<input type="checkbox"/> 18.49KB	STATUS REPORT by Defendants Suzanne Barber, Suzanne (I) Barber, Commerce City Animal Control, Commerce City Police Department, Commerce City, Colorado, Kendall Grove, Kendall (I) Grove. (Dawes, Steven) (Entered: 10/18/2011)
10/18/2011	36	<input type="checkbox"/> 123.06KB	Third MOTION for Extension of Time to File Response/Reply as to 31 MOTION to Dismiss <i>and in th Alternative Motion for Summary Judgment Unopposed</i> by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (Swearingen, Jay) (Entered: 10/18/2011)
10/18/2011	37	<input type="checkbox"/> 22.87KB	NOTICE of Entry of Appearance by Kate Lindsay McDonald on behalf of All Defendants (McDonald, Kate) (Entered: 10/18/2011)
10/18/2011	38	<input type="checkbox"/> 6.76KB	ORDER Granting 36 Motion for Extension of Time to File Response re 31 to and including October 24, 2011, by Judge Richard P. Matsch on 10/18/2011. (rpmcd) Modified to correct file date on 10/19/2011 (rpmcd). (Entered: 10/19/2011)

10/20/2011	39	<input type="checkbox"/> 6.65KB	MINUTE ORDER striking case from the the October 28, 2011, Calendar Call re: 31 MOTION to Dismiss and in th Alternative Motion for Summary Judgment, by Judge Richard P. Matsch on 10/20/2011. (rpmcd) (Entered: 10/20/2011)
10/24/2011	40	<input type="checkbox"/> 128.56KB	Fourth MOTION for Extension of Time to File Response/Reply as to 31 MOTION to Dismiss <i>and in th Alternative Motion for Summary Judgment Unopposed</i> by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (Swearingen, Jay) (Entered: 10/24/2011)
10/25/2011	41	<input type="checkbox"/> 6.79KB	ORDER Granting 40 Motion for Extension of Time to File Response re 31 , to and including October 31, 2011, by Judge Richard P. Matsch on 10/25/2011. (rpmcd) (Entered: 10/25/2011)
10/31/2011	42	<input type="checkbox"/> 4.08MB	RESPONSE to 31 MOTION to Dismiss <i>and in th Alternative Motion for Summary Judgment pdf exhibits</i> filed by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit)(Swearingen, Jay) (Entered: 10/31/2011)
11/02/2011	43		Conventionally Submitted Material : DVD with Exhibits 2 and 4 to Response to Motion, 42 by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. Text Only Entry (jjh,) (Entered: 11/03/2011)
11/09/2011	44		Conventionally Submitted Material : DVD with Exhibits 1, 3, 8, and 9 to Response to Motion, 42 by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio Text Only Entry (jjh,) (Entered: 11/09/2011)
11/11/2011	45	<input type="checkbox"/> 27.46KB	MOTION for Extension of Time to File Response/Reply as to 31 MOTION to Dismiss <i>and in th Alternative Motion for Summary Judgment</i> by Defendants Suzanne Barber, Suzanne (I) Barber, Commerce City Animal Control, Commerce City Police Department, Commerce City, Colorado, Kendall Grove, Kendall (I) Grove. (McDonald, Kate) (Entered: 11/11/2011)
11/14/2011	46	<input type="checkbox"/> 6.82KB	ORDER Granting 45 Motion for Extension of Time to File Reply. Deadline for defendants to file their reply brief to their Motion to Dismiss or in the Alternative a 31 Motion for Summary Judgment is extended to and including November 21, 2011, by Judge Richard P. Matsch on 11/14/2011.(rpmcd) (Entered: 11/14/2011)
11/21/2011	47	<input type="checkbox"/> 38.11KB	MOTION to Strike 42 Response to Motion, 44 Conventionally Submitted Material, 43 Conventionally Submitted Material by Defendants Suzanne Barber, Suzanne (I) Barber, Commerce City Animal Control, Commerce City Police Department, Commerce City, Colorado, Kendall Grove, Kendall (I) Grove. (McDonald, Kate) (Entered: 11/21/2011)
11/21/2011	48	<input type="checkbox"/> 1.70MB	REPLY to Response to 31 MOTION to Dismiss <i>and in th Alternative Motion for Summary Judgment</i> filed by Defendants Suzanne Barber, Suzanne (I) Barber, Commerce City Animal Control, Commerce City Police Department, Commerce City, Colorado, Kendall Grove, Kendall (I) Grove. (Attachments: # 1 Exhibit Ex. E & F to Reply Brief, # 2 Exhibit Ex. G, H & I to Reply Brief) (McDonald, Kate) (Entered: 11/21/2011)

12/08/2011	49	<input type="checkbox"/> 302.97KB	RESPONSE to 47 MOTION to Strike 42 Response to Motion, 44 Conventionally Submitted Material, 43 Conventionally Submitted Material filed by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (Attachments: # 1 Affidavit)(Swearingen, Jay) (Entered: 12/08/2011)
12/19/2011	50	<input type="checkbox"/> 62.73KB	REPLY to Response to 47 MOTION to Strike 42 Response to Motion, 44 Conventionally Submitted Material, 43 Conventionally Submitted Material filed by Defendants Suzanne Barber, Suzanne (I) Barber, Commerce City Animal Control, Commerce City Police Department, Commerce City, Colorado, Kendall Grove, Kendall (I) Grove. (McDonald, Kate) (Entered: 12/19/2011)
02/02/2012	51	<input type="checkbox"/> 6.72KB	Minute ORDER Setting Hearing on 31 MOTION to Dismiss and in th Alternative Motion for Summary Judgment for 3/14/2012 at 10:00 AM in Courtroom A, by Judge Richard P. Matsch on 2/2/2012. (rpmcd) (Entered: 02/02/2012)
03/14/2012	52	<input type="checkbox"/> 8.49KB	Courtroom Minutes for Motions Hearing held on 3/14/2012 before Judge Richard P. Matsch. ORDERED: Defendants' Motion to Dismiss and in the Alternative Motion for Summary Judgment 31 , is denied with respect to Officer Barber with respect to the First Claim for Relief considered as a Fourth Amendment violation and claim for qualified immunity and granted with respect to the tort claims. Defendant Commerce City's claim that plaintiffs failed to show a policy that the city violated that constituted and injury due to the loss of the dog is granted. Case will proceed forward with respect to the remaining claims against Officer Barber and all other claims against the other defendants are dismissed. Court finds dog ownership is joint among the two adult plaintiffs. Defendants' Motions to Strike Exhibits 47 , is terminated. Pretrial conference set April 20, 2012 at 2:00 p.m. (FTR: K. Terasaki) (rpmcd) (Entered: 03/14/2012)
03/14/2012	53	<input type="checkbox"/> 8.29KB	ORDER re: 31 DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT. Defendant Police Officer Suzanne Barber's motion for summary judgment is denied as to the First Claim for Relief. Motion for summary judgment by all other defendants is granted and the state law claims against Suzanne Barber are also dismissed, by Judge Richard P. Matsch on 3/14/2012. (rpmcd) (Entered: 03/14/2012)
03/14/2012	54	<input type="checkbox"/> 7.34KB	ORDER Setting Pretrial Conference for 4/20/2012 at 02:00 PM in Conference Room and Proposed Pretrial Order due by 4:00 p.m. 4/12/2012, by Judge Richard P. Matsch on 3/14/2012. (rpmcd) (Entered: 03/14/2012)
04/20/2012	55	<input type="checkbox"/> 7.25KB	Courtroom Minutes for Pretrial Conference held on 4/20/2012 before Judge Richard P. Matsch. ORDERED: Trial briefs regarding damages (plaintiff) and minor ownership (defendant) due by May 18, 2012. Responses due June 1, 2012. Four day jury trial scheduled July 9, 2012. Pretrial Order signed.(FTR: G. Mattei) (rpmcd) (Entered: 04/20/2012)
04/20/2012	56	<input type="checkbox"/> 311.71KB	PRETRIAL ORDER : Discovery completed, by Judge Richard P. Matsch on 4/20/2012. (rpmcd) (Entered: 04/20/2012)

04/20/2012	57	<input type="checkbox"/> 6.88KB	ORDER Setting Jury Trial for 7/9/2012 at 08:30 AM in Courtroom A, by Judge Richard P. Matsch on 4/20/2012. (rpmcd) (Entered: 04/20/2012)
05/18/2012	58	<input type="checkbox"/> 262.06KB	TRIAL BRIEF <i>Regarding Ownership of the Deceased Dog</i> by Defendants Suzanne Barber, Suzanne (I) Barber. (Attachments: # 1 Exhibit Exh. A & B)(McDonald, Kate) (Entered: 05/18/2012)
05/18/2012	59	<input type="checkbox"/> 152.29KB	TRIAL BRIEF <i>Re Damages</i> by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (Attachments: # 1 Exhibit Exhibit 1 Minute Order in Lohre Case, # 2 Affidavit Exhibit 2 Lohre Affidavit of Damages)(Swearingen, Jay) (Entered: 05/18/2012)
06/01/2012	60	<input type="checkbox"/> 79.04KB	TRIAL BRIEF <i>Regarding Proper 1983 Damages</i> by Defendants Suzanne Barber, Suzanne (I) Barber. (McDonald, Kate) (Entered: 06/01/2012)
06/01/2012	61	<input type="checkbox"/> 45.39KB	TRIAL BRIEF <i>Plaintiffs' Response to Defendant Barbers Trial Brief re Ownership of the Deceased Dog</i> by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (Swearingen, Jay) (Entered: 06/01/2012)
06/13/2012	62	<input type="checkbox"/> 8.67KB	ADVISORY RULINGS re: 58 , 59 , 60 and 61 . A trial preparation conference will be scheduled. The parties shall submit their proposed jury instructions and suggested voir dire questions three business days before the conference, by Judge Richard P. Matsch on 6/13/2012. (rpmcd) (Entered: 06/13/2012)
06/13/2012	63	<input type="checkbox"/> 6.66KB	MINUTE ORDER Setting Trial Preparation Conference for 7/3/2012 at at 02:00 PM in Conference Room, by Judge Richard P. Matsch on 6/13/2012. (rpmcd) (Entered: 06/13/2012)
06/29/2012	64	<input type="checkbox"/> 37.82KB	Proposed Jury Instructions by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (Swearingen, Jay) (Entered: 06/29/2012)
07/03/2012	65	<input type="checkbox"/> 10.51KB	NOTICE of Entry of Appearance by Juliet R. Piccone on behalf of All Plaintiffs (Piccone, Juliet) (Entered: 07/03/2012)
07/03/2012	66	<input type="checkbox"/> 7.25KB	Courtroom Minutes for Trial Preparation Conference held on 7/3/2012 before Judge Richard P. Matsch. FTR: K. Terasaki. (rpmcd) (Entered: 07/03/2012)
07/06/2012	67	<input type="checkbox"/> 59.21KB	AFFIDAVIT/RETURN of Service of Trial Subpoena upon Debra Bullock on 7-5-12, filed by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio (Piccone, Juliet) (Entered: 07/06/2012)
07/06/2012	68	<input type="checkbox"/> 63.20KB	AFFIDAVIT/RETURN of Service of Trial Subpoena upon William Rene Bullock on 7-5-12, filed by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio (Piccone, Juliet) (Entered: 07/06/2012)
07/06/2012	69	<input type="checkbox"/> 145.71KB	AFFIDAVIT/RETURN of Service of Waiver of Service Trial Subpoena upon Richard Hage on 7-3-12, filed by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio (Piccone, Juliet) (Entered: 07/06/2012)
07/06/2012	70	<input type="checkbox"/> 259.11KB	AFFIDAVIT <i>of Service for Andre Escalante</i> by Defendants Suzanne Barber, Suzanne (I) Barber. (McDonald, Kate) (Entered: 07/06/2012)

07/06/2012	71	<input type="checkbox"/> 257.96KB	AFFIDAVIT of Service for Animal Control Agent David Nickolaus by Defendants Suzanne Barber, Suzanne (I) Barber. (McDonald, Kate) (Entered: 07/06/2012)
07/06/2012	72	<input type="checkbox"/> 248.66KB	AFFIDAVIT of Service for Clarene Shelley by Defendants Suzanne Barber, Suzanne (I) Barber. (McDonald, Kate) (Entered: 07/06/2012)
07/06/2012	73	<input type="checkbox"/> 30.65KB	AFFIDAVIT of Service of Officer Christian Wasielewski by Defendants Suzanne Barber, Suzanne (I) Barber. (McDonald, Kate) (Entered: 07/06/2012)
07/06/2012	74	<input type="checkbox"/> 234.54KB	AFFIDAVIT of Service for Susan Kochevar by Defendants Suzanne Barber, Suzanne (I) Barber. (McDonald, Kate) (Entered: 07/06/2012)
07/07/2012	75	<input type="checkbox"/> 1.01MB	MOTION to Quash Service of Subpoenas or In the Alternative Motion to Bar Testimony from Rene Bullock and Debra Bullock by Defendants Suzanne Barber, Suzanne (I) Barber. (Attachments: # 1 Exhibit Plaintiffs' Supplemental Disclosure)(McDonald, Kate) (Entered: 07/07/2012)
07/07/2012	76	<input type="checkbox"/> 1.17MB	MOTION to Strike Plaintiffs' Supplemental Disclosures and to Bar Testimony of Witnesses and Introduction of Documents by Defendants Suzanne Barber, Suzanne (I) Barber. (Attachments: # 1 Exhibit Plaintiffs' Supplemental Disclosures, # 2 Exhibit Plaintiffs' Initial Disclosures)(McDonald, Kate) (Entered: 07/07/2012)
07/09/2012	77	<input type="checkbox"/> 42.72KB	Witness List by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio. (rpmcd) (Entered: 07/09/2012)
07/09/2012	78	<input type="checkbox"/> 40.83KB	Witness List by Defendant Suzanne (I) Barber. (rpmcd) (Entered: 07/09/2012)
07/09/2012	79	<input type="checkbox"/> 29.97KB	Courtroom Minutes for Jury Trial Day 1 held on 7/9/2012 before Judge Richard P. Matsch. ORDERED: Motion to Quash Service of Subpoenas or in the Alternative Motion to Bar Testimony from Rene Bullock and Debra Bullock 75 , is granted. Motion to Strike Plaintiffs Supplemental Disclosures and to Bar Testimony of Witnesses and Introduction of Documents 76 , is granted in part and denied in part as stated on record. (Attachments: # 1 Redacted Strike Sheet) FTR: K. Terasaki. (rpmcd) Modified on 7/10/2012 to add day of trial (jjhsl,). (Entered: 07/09/2012)
07/10/2012	80	<input type="checkbox"/> 0.99MB	Plaintiffs Narrative Offer of Proof re Emotional Damages (jjhsl,) (Entered: 07/10/2012)
07/10/2012	81	<input type="checkbox"/> 12.54KB	MINUTE ENTRY for Jury Trial Day 2 proceedings held on 7/10/2012 before Judge Richard P. Matsch. Defendants oral motion for judgment as a matter of law pursuant to Rule 50 is DENIED. FTR: Kathy Terasaki. (wydcd, rrk) (Entered: 07/12/2012)
07/11/2012	82	<input type="checkbox"/> 34.04KB	STIPULATION OF FACT by Plaintiffs Frank Agazio, Julia Agazio, Maria Agazio, Defendants Suzanne Barber, Suzanne (I) Barber. (wydcd, rrk) (Entered: 07/12/2012)
07/11/2012	83	<input type="checkbox"/> 290.98KB	MINUTE ENTRY for Jury Trial Day 3 proceedings completed on 7/11/2012 before Judge Richard P. Matsch. JURY VERDICT. Jury finds pursuant to its

			July 2, 2012 Verdict Form (original verdict form retained in clerks office pursuant to General Order 2007-3). FTR: Kathy Terasaki. (Attachments: # 1 Plaintiffs' Witness List, # 2 Defendant's Witness List, # 3 Plaintiffs' List of Received Exhibits, # 4 Defendant's List of Received Exhibits, # 5 Redacted Verdict Form, # 6 Redacted Jury Note (Verdict)) (wydcd, rrk) (Entered: 07/12/2012)
07/11/2012	84	<input type="checkbox"/> 31.45KB	STIPULATION AND ORDER REGARDING CUSTODY OF EXHIBITS AND DEPOSITIONS re: 83 , by Judge Richard P. Matsch on 7/11/12. (wydcd, rrk) (Entered: 07/12/2012)
07/12/2012	85	<input type="checkbox"/> 73.91KB	JUDGMENT. Ordered that defendant shall have her costs by the filing of a Bill of Costs with the Clerk of this Court within 14 days of the entry of this Judgment. Ordered that the Complaint and this civil action are dismissed with prejudice. By Deputy Clerk and Approved by Judge Richard P. Matsch on 07/12/12. (jjhsl,) Modified on 7/12/2012 (jjhsl,). (Entered: 07/12/2012)
07/25/2012	86	<input type="checkbox"/> 0.60MB	"Withdrawn" Proposed Bill of Costs by Defendants Suzanne Barber, Suzanne (I) Barber. (Attachments: # 1 Affidavit Statement in Support of Bill of Costs & Affidavit of Costs, # 2 Exhibit Exhibits to Bill of Costs)(McDonald, Kate) Modified re 87 on 8/10/2012 (rpmcd). (Entered: 07/25/2012)
08/10/2012	87	<input type="checkbox"/> 23.69KB	Withdrawal of Document <i>Defendant's Bill of Costs</i> by Defendants Suzanne Barber, Suzanne (I) Barber. (McDonald, Kate) Modified on 8/10/2012 (rpmcd). (Entered: 08/10/2012)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

FRANK AGAZIO,
JULIA AGAZIO,
MARIA AGAZIO, a minor, by and through her next friends Frank and Julia Agazio,

Plaintiffs

v.

COMMERCE CITY, COLORADO, a municipal corporation
COMMERCE CITY POLICE DEPARTMENT,
COMMERCE CITY ANIMAL CONTROL,
COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746), in her official
and individual capacity,
COMMERCE CITY POLICE OFFICER KENDALL GROVE (CC1088), in his official
and individual capacity,
ADAMS COUNTY COMMUNICATION CENTER, INC.

Defendants.

COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiffs Frank Agazio, Julia Agazio, and Maria Agazio, by and through their counsel, The Animal Law Center, and hereby file this Complaint and Jury Demand. Plaintiffs respectfully allege as follows:

INTRODUCTION

1. Plaintiffs bring this civil rights action pursuant to 42 U.S.C. §§ 1983 and 1988 for relief through compensatory damages and attorney's fees stemming from Defendants' violations of Plaintiffs' rights guaranteed by the Fourth and

Fourteenth Amendments to the Constitution of the United States. Defendants' conduct under color of state and city law proximately caused the deprivation of Plaintiffs' federally protected rights. Plaintiffs seek relief through compensatory damages, and attorney's fees. Plaintiffs seek damages in excess of \$75,000.

JURISDICTION AND VENUE

2. This action arises under the Constitution and laws of the United States including Article III, Section 1 of the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has authority to grant the declaratory relief requested herein pursuant to 28 U.S.C. § 2201.
3. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391. All of the events alleged herein occurred within the state of Colorado, and all of the parties are residents of the state.
4. Jurisdiction supporting Plaintiffs' claim for attorney's fees is conferred by 42 U.S.C. § 1988.

PARTIES

5. Plaintiffs Frank Agazio, Julia Agazio, and Maria Agazio (collectively "Plaintiffs" "the Agazios" or "Plaintiffs Agazio") are individuals residing in Commerce City, Adams County, Colorado. At all times pertinent Plaintiffs resided in Commerce City, Adams County, Colorado.
6. Frank Agazio and Julia Agazio are the natural parents of Maria Agazio, a minor.

7. Defendant Commerce City is a municipality incorporated under the laws of the State of Colorado for purposes of liability under 42 U.S.C. § 1983. It carries out law enforcement activities through the Commerce City Police Department.
8. Defendant Commerce City Police Department is a department of Defendant Commerce City, a municipality incorporated under the laws of the State of Colorado for purposes of liability under 42 U.S.C. § 1983.
9. Defendant Commerce City Animal Control is a department of Defendant Commerce City, a municipality incorporated under the laws of the State of Colorado for purposes of liability under 42 U.S.C. § 1983.
10. Defendant Adams County Adams County Communication Center, Inc. (“Adcom 911” or “Dispatch”) is a Colorado non-profit corporation governed by thirteen governmental agencies in Adams County, Colorado. Adcom 911 serves thirteen police and fire emergency service agencies and is incorporated under the laws of the State of Colorado for purposes of liability under 42 U.S.C. § 1983.
11. Defendant Commerce City Police Officer Suzanne Barber (CC2746) (“Officer Barber”) was at all times relevant to this complaint duly appointed and sworn as a police officer working for the Commerce City Police Department. She is sued individually and she is also sued in her official capacity. Officer Barber acted under color of law in the course of carrying out the actions and omissions that violated Plaintiffs’ rights.
12. Defendant Commerce City Police Officer Kendall Grove (CC1088) (“Officer Grove”) was at all times relevant to this complaint duly appointed and sworn as a police officer working for the Commerce City Police Department. He is sued

individually and he is also sued in his official capacity. Officer Grove acted under color of law in the course of carrying out the actions and omissions that violated Plaintiffs' rights.

13. All Defendants acted under color of state and city law. Alternatively, or in combination, Defendants acted under color of federal law.

14. All of the events described herein occurred in Commerce City, County of Adams, and State of Colorado.

FACTUAL BACKGROUND

15. On or about February 3, 2010, at approximately 3:00pm, Plaintiff Frank Agazio accidentally misdialed 9-1-1.

16. Immediately thereafter, Plaintiff Frank Agazio received a telephone call from Dispatch and Mr. Agazio informed the dispatch officer that there was no emergency and that the 9-1-1 call was accidental.

17. Nevertheless, Dispatch still decided to send an officer to investigate and did not inform the Agazios that a police officer would be en route.

18. On or about February 3, 2010, at approximately 3:11 p.m., Officer Barber responded to Plaintiffs' home located at 8705 Rosemary Street, Commerce City, Colorado 80022.

19. Upon her arrival, Officer Barber walked through Plaintiffs' gated fence, onto Plaintiffs' property, and into Plaintiffs' yard, which was clearly marked with "NO TRESPASSING" signs, with her gun already drawn.

20. Plaintiffs' home is located on a busy street and at the time of Officer Barber's arrival, traffic was stopped on the street, including a school bus. Further, Plaintiffs' property contains a large concrete driveway.

21. After entering Plaintiffs' yard, Officer Barber observed Plaintiffs three companion animals, dogs "Zoey", "Bella" and "Daisy."

22. Officer Barber then shot and killed Plaintiffs' mixed breed dog "Zoey" without cause or due process of law.

23. Plaintiff Maria Agazio, thirteen years of age, witnessed all events and screamed and then fainted when she saw Officer Barber shoot her beloved dog "Zoey."

24. After hearing the gunshot, Plaintiff Frank Agazio went out into his yard to determine the source of the gunshot. At this time, Officer Barber pointed her weapon at Frank Agazio and demanded that he move back, again without cause, putting him in imminent fear for his life. Notably, the safety on her weapon was off and her finger was on the trigger.

25. Around the same time, two additional Commerce City Police Officers, including Officer Grove, arrived on motorcycle.

26. Plaintiff Julia Agazio, observed these events through the window of Plaintiffs' residence and then came out of the house after hearing the gunshot and seeing her husband threatened.

27. At the time, Plaintiff Julia Agazio was recovering from extensive abdominal surgery, was under a physician's care, and restricted to bed rest.

28. Officer Grove forcefully grabbed Plaintiff Julia Agazio without cause, and stretched both of her hands over her head, causing her severe pain and injury and threatened her with arrest.
29. Officer Grove also threatened to spray Plaintiffs Frank and Julia Agazio with mace.
30. Police officers failed to investigate or inspect Plaintiffs' home, after claiming that they arrived to investigate a 911 call.
31. Approximately ten to fifteen minutes after the shooting, Animal Control Officer David Nickolaus (CC3032) arrived on the scene and photographed "Zoey's" dead body.
32. No veterinary care was given to "Zoey."
33. Eventually, Officer Nickolaus removed "Zoey's" body and transported the dog for cremation. Plaintiffs had to wait weeks for information concerning "Zoey's" remains and were forced to pay out of their own pockets for the cremation.

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983 Fourth and Fourteenth Amendments Violation)

34. Plaintiffs incorporate all other paragraphs of this Complaint for purposes of this Claim.
35. This Claim is brought against Defendant Officer Barber.
36. As described herein, Officer Barber, while acting under color of law, unlawfully and without due process of law deprived the Agazios of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including their rights to freedom from unlawful entry of

property as guaranteed by the Fourth Amendment to the Constitution of the United States of America and 42 U.S.C. §1983 in that the police meaningfully entered onto her land.

37. Officer Barber wantonly, knowingly, recklessly, and excessively used unnecessary force without any reasonable justification or probable cause in drawing her weapon and fatally shooting “Zoey.” These actions were in violation of the Plaintiffs’ rights under the Fourth and Fourteenth Amendments to the Constitution of the United States.

38. In her official capacity as a law enforcement officer, under color of state law, and acting within the ordinary course and scope of her employment, or, alternatively, in her individual capacity, Officer Barber fatally shot “Zoey” without any legal right to do so.

39. Officer Barber’s conduct was further reckless given the higher chance of ricochet fire due to the concrete driveway close to Plaintiffs’ home and the traffic on Plaintiffs’ busy street.

40. As a direct and proximate result of Officer Barber’s conduct, the Plaintiffs have been damaged in various respects including, without limitation, being permanently deprived of the property value and companionship of their dog, “Zoey,” as well as suffering severe mental and physical anguish due to the egregious nature of their loss, all attributable to the deprivation of their constitutional and statutory rights guaranteed by the Fourth and Fourteenth Amendments of the Constitution of the United States and protected under 42 U.S.C. § 1983.

WHEREFORE, Plaintiffs pray for judgment against Defendant Barber as follows:

- a. actual damages in excess of \$150,000.00;
- b. costs and reasonable attorneys fees, and
- c. such other relief as may be awarded by the Court.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 1983 Fourth and Fourteenth Amendments Violation)

41. Plaintiffs incorporate all other paragraphs of this Complaint for purposes of this claim.

42. This Claim for Relief is being brought against Commerce City and the Commerce City Police Department.

43. Acting under color of law and pursuant to official policy, custom or widespread practice, Commerce City and its Police Department knowingly, recklessly or with deliberate indifference and callous disregard of Plaintiffs' rights, and the rights of dog owners in Commerce City, failed to instruct, supervise, control, equip, train, or discipline on a regular and continuing basis, police officers in their duties to refrain from unlawfully killing dogs and using excessive force against dogs that pose no immediate danger.

44. Defendant Commerce City had specific knowledge of said policy, custom or practice and exhibited a deliberate indifference to the unreasonable risk of property damage or loss which said policy, custom or practice posed.

45. Commerce City and its Police Department had an affirmative duty to prevent, or aid in preventing, the commission of such wrongs. Instead, knowingly,

recklessly, or with deliberate indifference and callous disregard of Plaintiffs' rights and the rights of dog owners in Commerce City, these defendants failed and refused to do so.

46. Commerce City and its Police Department directly or indirectly, under color of law, approved or ratified the unlawful, deliberate, malicious, reckless, or wanton conduct of its police officers as described above.

47. As a direct and proximate result of such conduct, Plaintiffs have been damaged in various respects including, without limitation, being permanently deprived of the property value and companionship of their dog, "Zoey" without the due process of law, as well as suffering severe mental and physical anguish due to the egregious nature of their loss, all attributable to the deprivation of their constitutional and statutory rights guaranteed by the Fourth and Fourteenth Amendments of the Constitution of the United States and protected under 42 U.S.C. § 1983.

WHEREFORE, Plaintiffs pray for judgment against Commerce City as follows:

- a. actual damages in excess of \$150,000.00, and
- b. such other relief as may be awarded by the Court.

THIRD CLAIM FOR RELIEF

(Intentional Infliction of Severe Emotional Distress)

48. Plaintiffs incorporate all other paragraphs of this Complaint for purposes of this claim.

49. This claim is being brought against Defendants Commerce City, Commerce City Police Department, Commerce City Animal Control, and Commerce City Police Officer Barber.

50. The decision to shoot a companion animal that had not been identified as vicious or aggressive and who did not injure or threaten Officer Barber or anyone else, was extreme and outrageous conduct.

51. Acting under the color of law, Commerce City and its police officers and Police Department knowingly, recklessly or with deliberate indifference and callous disregard of Plaintiffs' rights failed to instruct, supervise, train, or equip its officers in their duties to a dog that had been shot and severely wounded by one of its officers.

52. Commerce City Police Officers intentionally failed to contact Commerce City Animal Control or any veterinarians to render emergency medical care to "Zoey."

53. Further, no timely information was provided to the Plaintiffs about the status and location of "Zoey's" remains.

54. Shooting and killing Plaintiffs' companion animal "Zoey" in the presence of Plaintiff Maria Agazio, thirteen years of age, was extreme and outrageous conduct. Plaintiff Maria Agazio suffered from extreme emotional distress physical anguish and consequently required trauma counseling as a result.

55. As a direct and proximate result of such conduct, Plaintiffs have been damaged in various respects including, without limitation, suffering severe emotional distress due to the intentional actions of Commerce City, Commerce City Police

Department, Commerce City Police Officers, and Commerce City Animal Control.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- a. actual damages in excess of \$150,000.00;
- b. costs and reasonable attorneys fees, and
- c. such other relief as may be awarded by the Court.

FOURTH CLAIM FOR RELIEF

(Negligent Infliction of Severe Emotional Distress)

56. Plaintiffs incorporate all other paragraphs of this Complaint for purposes of this claim.

57. This claim is being brought against Defendants Commerce City, Commerce City Police Department, Commerce City Animal Control, and Commerce City Police Officer Barber.

58. The decision to shoot a companion animal that had not been identified as a vicious or aggressive animal, and who did not injure or threaten Officer Barber or anyone else, was extreme and outrageous conduct.

59. Acting under the color of law, Commerce City, its Police Department, and officers knowingly, recklessly or with deliberate indifference and callous disregard of Plaintiffs' rights failed to instruct, supervise, train, or equip its officers in their duties to a dog that had been shot and severely wounded by one of its officers.

60. Commerce City, its Police Department, and officers involved knew or should have known that shooting and severely wounding a companion animal and then

failing to render it medical assistance in a timely fashion would cause the animal's owner severe emotional distress.

61. Shooting and killing Plaintiffs' companion animal "Zoey" in the presence of Plaintiff Maria Agazio, thirteen years of age, was extreme and outrageous conduct. Plaintiffs' daughter required trauma counseling as a result and suffered from extreme emotional and physical distress.

62. As a direct and proximate result of such conduct, Plaintiffs have been damaged in various respects including, without limitation, suffering severe emotional and physical distress due to the intentional actions of Commerce City, Commerce City Police Department, Commerce City Police Officers, and Commerce City Animal Control.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- a. actual damages in excess of \$150,000.00;
- b. costs and reasonable attorneys fees, and
- c. such other relief as may be awarded by the Court.

FIFTH CLAIM FOR RELIEF

(Gross Negligence)

63. Plaintiffs incorporate all other paragraphs of this Complaint for purposes of this claim.

64. This claim is being brought against Defendant Officer Barber in her individual and official capacity.

65. Officer Barber, who fatally shot the Plaintiffs' dog, had a duty to the Plaintiffs to employ a reasonable amount of judgment, care and skill as is ordinarily possessed by members of law enforcement.
66. Officer Barber knew or should have known that shooting a family dog on the dog owner's private property, without justification, and in the presence of a thirteen year old child is not an acceptable police practice.
67. Officer Barber knew or should have known that shooting a dog in this manner would cause it to suffer great bodily injury or die.
68. Officer Barber knew or should have know that she had no legal right to enter a gated fence clearly marked with "no trespassing" signs and walk nearly 40 yards onto the Plaintiffs' property, with a drawn weapon.
69. Officer Barber knew or should have known that attempting to contact the property owners in the course of her investigation of the 9-1-1 call was the appropriate first step in determining whether an emergency existed, and there was no information that there had been, or would be any threat or use of violence at these premises.
70. The above-described actions demonstrate a deliberate intention to harm and an utter indifference to both the welfare of the Plaintiffs and their dog, "Zoey."
71. The acts and omissions of Officer Barber were the direct and proximate cause of the internal bleeding and injuries that resulted in "Zoey's" death.
72. As a direct and proximate result of such conduct, the Plaintiffs have been damaged in various respects including, without limitation, being permanently deprived of the property value and companionship of their dog, "Zoey," as well as suffering severe mental anguish due to the egregious nature of their loss.

WHEREFORE, Plaintiffs pray for judgment against Defendant Barber as follows:

- a. actual damages in excess of \$150,000.00; and
- b. such other relief as may be awarded by the Court.

SIXTH CLAIM FOR RELIEF

(28 U.S.C. § 1983 – Excessive Use of Force)

73. Plaintiffs incorporate all other paragraphs of this Complaint for purposes of this claim.

74. Officer Barber, in her individual and official capacities, and while acting under color of law, used excessive force when, as her first and only line of action, she, with her previously drawn pistol, shot Plaintiffs’ companion animal “Zoey” who was not behaving in an aggressive manner and was standing more than fifteen feet away from Officer Barber.

75. Although Officer Barber was equipped with mace and other non-lethal methods of defense, she deliberately chose not to use those methods but rather to immediately, without provocation or justification shoot and kill Plaintiffs thirty pound dog “Zoey.”

76. Defendants’ conduct proximately caused Plaintiff significant injuries, damages, and losses.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- a. actual damages in excess of \$150,000.00;
- b. costs and reasonable attorneys fees, and
- c. such other relief as may be awarded by the Court.

SEVENTH CLAIM FOR RELIEF

(Battery)

77. Plaintiffs incorporate all other paragraphs of this Complaint for purposes of this claim.

78. Officer Grove, in his individual and official capacity and while acting under color of law, intended to make harmful contact with Plaintiff Julia Agazio and in fact, did, assault Plaintiff Julia Agazio when he forcefully grabbed Plaintiff Julia Agazio, without lawful cause.

79. Plaintiff Julia Agazio had recently undergone an extensive, invasive abdominal surgery and was experiencing pain and great difficulty in moving.

80. Because of Officer Grove's assault, Plaintiff Julia Agazio had increased blood output and a delayed recovery, plus severe emotional distress and physical pain.

WHEREFORE, Plaintiffs pray for judgment against Officer Grove as follows:

- a. actual damages in excess of \$150,000.00;
- b. costs and reasonable attorneys fees, and
- c. such other relief as may be awarded by the Court.

EIGHTH CLAIM FOR RELIEF

(Conversion)

81. Plaintiffs incorporate all other paragraphs of this Complaint for purposes of this claim.

82. This claim for relief is being brought against Officer Barber.

83. Plaintiffs owned a piece of animate living property in the form of their dog “Zoey.”

84. Officer Barber shot and killed “Zoey.”

85. “Zoey’s” death deprived the Plaintiffs of all further use and enjoyment of their property and destroyed their property interest in their dog, all without due process of law.

86. As a direct and proximate result of such conduct, the Plaintiffs have been damaged in various respects including, without limitation, being permanently deprived of the property value and companionship of their dog, “Zoey”, as well as suffering severe mental and emotional distress due to the egregious nature of their loss.

WHEREFORE, Plaintiffs pray for judgment against Officer Barber as follows:

- a. actual damages in excess of \$150,000.00;
- b. costs and reasonable attorneys fees, and
- c. such other relief as may be awarded by the Court.

NINTH CLAIM FOR RELIEF

(Assault)

87. Plaintiffs incorporate all other paragraphs of this Complaint for purposes of this claim.

88. This claim for relief is being brought against Officer Barber.

89. Officer Barber, in her individual and official capacity and while acting under color of law, intended to cause an offensive or harmful physical contact with

Plaintiff Frank Agazio when she pointed her weapon at him without cause, putting him in imminent fear for his life.

WHEREFORE, Plaintiffs pray for judgment against Officer Barber as follows:

- a. actual damages in excess of \$150,000.00;
- b. costs and reasonable attorneys fees, and
- c. such other relief as may be awarded by the Court.

TENTH CLAIM FOR RELIEF

(Trespass)

90. Plaintiffs incorporate all other paragraphs of this Complaint for purposes of this claim.

91. Commerce City Police officers, in their individual and official capacities, intentionally entered upon and remained upon Plaintiffs' lawfully owned property.

92. The officers had no valid or reasonable reason to remain on Plaintiffs' property and Plaintiffs, in fact, repeatedly requested the officers leave Plaintiffs' property.

93. The officers refused to leave and remained on Plaintiffs' property longer than necessary for any reasonable purpose or privilege.

WHEREFORE, Plaintiffs pray for judgment against the defendants as follows:

- a. actual damages in excess of \$150,000.00;
- b. costs and reasonable attorneys fees, and
- c. such other relief as may be awarded by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in

their favor and against the Defendants, and grant:

- (a) Appropriate declaratory and other injunctive and/or equitable relief;
- (b) Compensatory and consequential damages, including damages for emotional distress, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- (c) All economic losses on all claims allowed by law;
- (d) Attorney's fees and the costs associated with this action, including those associated with expert witness fees, on all claims allowed by law;
- (e) Pre- and post-judgment interest at the lawful rate.
- (f) Any further relief that this court deems just and proper, and any other relief as allowed by law.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES TRIABLE

Respectfully submitted this 29th day of July, 2010.

*By: Original signature of Jennifer Reba
Edwards, #38349,
on file and available for inspection pursuant
to C.R.C.P. 121.*

/s/ Jennifer Reba Edwards, Reg. # 38349
Jennifer Reba Edwards
The Animal Law Center, LLC
4465 Kipling St., Suite 108
Wheat Ridge, Colorado 80033
Telephone: (303) 322-4355
Facsimile: (303) 322-4354
jre@theanimallawcenter.com
Attorney for Plaintiff

*By: Original signature of Jay Wayne
Swearingen, #4842,
on file and available for inspection pursuant
to C.R.C.P. 121.*

/s/ Jay Wayne Swearingen, Reg. # 4842

Jay Wayne Swearingen
The Animal Law Center, LLC
4465 Kipling St., Suite 108
Wheat Ridge, Colorado 80033
Telephone: (303) 322-4355
Facsimile: (303) 322-4354
jws@theanimallawcenter.com
Attorney for Plaintiff

Plaintiffs' Address:

8705 Rosemary Street
Commerce City, Colorado 80022

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of July, 2010, a true and correct copy of the foregoing **COMPLAINT** was filed and served using _____, emailed and/or deposited in the United States mail, postage prepaid, properly addressed to:

Clerk of the Court
Alfred A. Arraj United States Courthouse
Room A-105
901 19th Street
Denver, Colorado 80294-3589

Attorney for Defendants

By: Original signature of Jay Wayne Swearingen, #4842, on file and available for inspection pursuant to C.R.C.P. 121.

/s/ Jay Wayne Swearingen, Reg. # 4842
Attorney for Plaintiff
Jay Wayne Swearingen
The Animal Law Center
4465 Kipling Street, Suite 108
Wheat Ridge, CO 80033
Tel: 303-322-4355
Fax: 303-322-4354
E-mail: jws@theanimallawcenter.com

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Agazio, Frank; Agazio, Julia; Agazio, Maria

(b) County of Residence of First Listed Plaintiff Adams
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
The Animal Law Center, 4465 Kipling Street, Suite 108
Wheat Ridge, CO, 80033, Phone: 303-322-4355
Jennifer Reba Edwards and Jay Wayne Swearingen, Attorneys

DEFENDANTS

Commerce City, Colorado; Commerce City Police Department; Commerce City Animal Control; Commerce City Police Officer Suzanne Barber (CC2746); Commerce City Police Officer Kendall Grove (CC1088); Adams County Communication Center, Inc.

County of Residence of First Listed Defendant Adams
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 1983

Brief description of cause:

Unlawful shooting of a dog by a police officer

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ 150,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/29/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Court Name: U.S. District Court, Colorado
Division: 1
Receipt Number: COX030271
Cashier ID: sg
Transaction Date: 08/09/2010
Payer Name: ANIMAL LAW CENTER

CIVIL FILING FEE
For: ANIMAL LAW CENTER
Amount: \$350.00

CREDIT CARD
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

10-CV-01895

A fee of \$45.00 will be assessed on
any returned check.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 10-cv-01895-RPM

FRANK AGAZIO,
JULIA AGAZIO,
MARIA AGAZIO, a minor, by and through her next friends Frank and Julia Agazio,

Plaintiffs,

v.

COMMERCE CITY, COLORADO,
COMMERCE CITY POLICE DEPARTMENT,
COMMERCE CITY ANIMAL CONTROL,
COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746), in her official
and individual capacity,
COMMERCE CITY POLICE OFFICER KENDALL GROVE (CC1088), in his official and
individual capacity,
ADAMS COUNTY COMMUNICATION CENTER, INC.,

Defendants.

ORDER GRANTING MOTION TO FILE SECOND AMENDED COMPLAINT

Upon review of the Motion for Leave to File Second Amended Complaint [8], filed
today, it is

ORDERED that the motion is granted.

DATED: October 21st, 2010

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 10-cv-01895-RPM

FRANK AGAZIO,
JULIA AGAZIO,
MARIA AGAZIO, a minor, by and through her next friends Frank and Julia Agazio,

Plaintiffs,

v.

COMMERCE CITY, COLORADO,
COMMERCE CITY POLICE DEPARTMENT,
COMMERCE CITY ANIMAL CONTROL,
COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746), in her official
and individual capacity,
COMMERCE CITY POLICE OFFICER KENDALL GROVE (CC1088), in his official and
individual capacity,
ADAMS COUNTY COMMUNICATION CENTER, INC.,

Defendants.

ORDER OF DISMISSAL AS TO DEFENDANT ADAMS COUNTY COMMUNICATIONS
CENTER, INC.

The sole claim made by the plaintiffs against the named defendant Adams County Communication Center, Inc., in the second amended complaint is the fourth claim for relief alleging negligence as specified in paragraphs 63 and 64. Adams County Communication Center, Inc., has moved to dismiss based on the Colorado Governmental Immunity Act, asserting that it did not receive notice of the plaintiffs' claim as required by that statute. The plaintiffs responded on November 22, 2010, arguing substantial compliance in that notice was sent to the Colorado Attorney General, the City Attorney's Office for Commerce City and the Commerce City Police Department listing the 911 call center. The statute requires that notice be given to the governing

body of the governmental organization. Exhibit B to the defendant's motion shows it is an entity organized by articles of incorporation with management vested in a board of directors consisting of representatives from the public entities involved in the inter-governmental cooperation agreement. Because the plaintiffs failed to give notice to that governing body, it is

ORDERED that the defendant Adams County Communication Center, Inc., is dismissed from this civil action and the claim made against it is dismissed with prejudice.

DATED: December 7th, 2010

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 10-cv-01895-RPM

FRANK AGAZIO,
JULIA AGAZIO,
MARIA AGAZIO, a minor, by and through her next friends Frank and Julia Agazio,

Plaintiffs,

v.

COMMERCE CITY, COLORADO,
COMMERCE CITY POLICE DEPARTMENT,
COMMERCE CITY ANIMAL CONTROL,
COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746), in her official
and individual capacity,
COMMERCE CITY POLICE OFFICER KENDALL GROVE (CC1088), in his official and
individual capacity,
ADAMS COUNTY COMMUNICATION CENTER, INC.,

Defendants.

ORDER SETTING SCHEDULING CONFERENCE

Pursuant to D.C.COLO.LCivR 16, it is

ORDERED that a scheduling conference will be held on **January 14, 2011, at 3:00 p.m.** in the Conference Room, Second Floor, the Byron White United States Courthouse, 1823 Stout Street, Denver, Colorado. Counsel are directed to comply with the Instructions for Preparation of Scheduling Order which may be found at <http://www.cod.uscourts.gov/judges/judges.aspx> (Senior Judge Richard P. Matsch Procedures) and use the format provided with those instructions (Rev. 1/08). The proposed order (original only) on paper, shall be submitted directly to chambers by **4:00 p.m. on January 6, 2011.**

The conference is conducted with lead counsel present in person. No parties or

representatives of parties will be permitted to attend.

DATED: December 7th, 2010

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 10-cv-01895-RPM

FRANK AGAZIO,
JULIA AGAZIO,
MARIA AGAZIO, a minor, by and through her next friends Frank and Julia Agazio,

Plaintiffs,

v.

COMMERCE CITY, COLORADO,
COMMERCE CITY POLICE DEPARTMENT,
COMMERCE CITY ANIMAL CONTROL,
COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746), in her official
and individual capacity,
COMMERCE CITY POLICE OFFICER KENDALL GROVE (CC1088), in his official and
individual capacity,

Defendants.

ORDER AWARDING FEES TO ADAMS COUNTY COMMUNICATION CENTER, INC.

Upon consideration of the motion of Defendant Adams County Communication Center, Inc., for fees and costs filed December 17, 2010, the plaintiffs' response, filed January 6, 2011, and the moving defendant's reply, filed January 20, 2011, it is

ORDERED that pursuant to C.R.S. § 13-17-201, attorney's fees should be awarded in the amount of \$3,035.00 and the request for costs of \$22.24 for copy charges is denied as not recoverable under Fed.R.Civ.P. 54(d). It is therefore

ORDERED that the plaintiffs shall pay to Defendant Adams County Communication Center, Inc., attorney's fees in the amount of \$3,035.00.

DATED: February 3rd, 2011

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 10-cv-01895-RPM

FRANK AGAZIO,
JULIA AGAZIO,
MARIA AGAZIO, a minor, by and through her next friends Frank and Julia Agazio,

Plaintiffs,

v.

COMMERCE CITY, COLORADO,
COMMERCE CITY POLICE DEPARTMENT,
COMMERCE CITY ANIMAL CONTROL,
COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746), in her official
and individual capacity,
COMMERCE CITY POLICE OFFICER KENDALL GROVE (CC1088), in his official and
individual capacity,

Defendants.

ORDER AMENDING SCHEDULING ORDER

Upon review of the Joint Motion to Amend Expert Disclosure Deadlines in the
Scheduling Order [26] filed March 30, 2011, it is

ORDERED that the motion is granted and paragraphs 7d and 7d(3) and (4) of
the Scheduling Order are amended as follows:

d. Expert Witness Disclosures: As set forth below.

(3) The party bearing the burden of persuasion on the issues for which the expert
opinion is to be offered shall designate the expert and provide opposing counsel
with all the information specified in Fed. R. Civ. P. 26(a)(2) on or before June 1,
2001.

(4) The parties shall designate all contradictory experts and provide opposing counsel with all information specified in Fed. R. Civ. P. 26(a)(2) on or before July 1, 2011.

DATED: March 31, 2011

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

ORDER FOR CALENDAR CALL

Upon review of the files in the civil actions that are subject to this order, the Court has determined that trials should now be scheduled by convening a Calendar Call to be attended by trial counsel. Recognizing that discovery may not have been completed, that motions may be pending and that there have been no pretrial conferences held, the Court must depend upon counsel to provide necessary information in a **joint statement to be handed up when the case is called**. Accordingly, it is

ORDERED that counsel responsible for the trial of the cases on the attached list will appear at a Calendar Call on October 28, 2011, in Courtroom A, Second Floor, the Byron White United States Courthouse, 1823 Stout Street, Denver, Colorado, at the time designated.

In all cases, counsel are directed to meet at least 10 days before the Calendar Call and prepare a joint status statement answering the following questions:

Has all discovery been completed?

Is it reasonable to expect that counsel will agree on a pretrial order
without convening a pretrial conference?

Are any motions pending or contemplated?

Is this a jury trial?

What is the expected length of trial?

What is the probability of settlement?

These statements will be handed up at the Calendar Call, and will be considered in setting the trial date. Counsel responsible for the case must be present to respond to the court's questions. Trial dates are expected to be within six months of the Calendar Call.

Dated: August 25th, 2011

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge

CALENDAR CALL

8:00 a.m.

10-cv-891	THERESA L. GEOPFERT v. FINANCIAL CONSULTANTS, INC., IMY'S BOYS CONDOS, LLC, MONARCH MOUNTAIN LODGE, LLC, CLIFFHANGERS'S RESTAURANT & LOUNGE, LLC, RICHARD MCHOSE, and DONALD MCHOSE	Pamela J. Walker Dale R. Enck
10-cv-1489	PUBLIO CARDENAS v. TRELLEBORG SEALING SOLUTIONS US, INC.	Robert Gingras Andrew W. Volin
10-cv-1895	FRANK AGAZIO, JULIA AGAZIO, MARIA AGAZIO v. COMMERCE CITY, COLORADO, COMMERCE CITY POLICE DEPARTMENT COMMERCE CITY ANIMAL CONTROL, COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746), COMMERCE CITY POLICE OFFICER KENDALL GROVE (CC1088)	Jay Wayne Swearingen Steven J. Dawes
10-cv-2280	VINCENT MACIEYOVSKI v. CITY AND COUNTY OF DENVER, DEPARTMENT OF PUBLIC BUILDINGS, DENVER ART MUSEUM	Mark S. Bove Robert A. Wolf
10-cv-2308	PAUL D. McKINNIS and DALRIADA ENTERPRISES LLC v. FITNESS TOGETHER FRANCHISE CORPORATION	Harold R. Bruno III David James Meretta Jess Alexander Dance Leonard H. MacPhee
10-cv-2585	RITA MONTOYA v BRIGHTON 27J SCHOOL DISTRICT	Paul J. Maxon Michael W. Schreiner
10-cv-2636	JUSTIN HANDLIN and LYNNE HANDLIN v. LIBERTY MUTUAL INSURANCE COMPANY	Michael J. Ogborn Troy R. Olsen
10-cv-2729	BRAULIO MAXIMILIANO and TARA MAXIMILIANO v. SAFECO INSURANCE COMPANY OF AMERICA	Jerold Hart Troy R. Olsen
10-cv-2870	JAMI NEWBERRY v. BEST BUY STORES, L.P.	Seth J. Benezra Elizabeth S. McKelvey

(SEE PAGE 3)

CALENDAR CALL

8:30 a.m.

10-cv-2880	LAVERN E. BAHLMANN, JR. v. GREAT WESTERN RAILWAY OF COLORADO, LLC, a/k/a GREAT WESTERN RAILROAD OF COLORADO, LLC	John J. Rossi Michael J. Daugherty
10-cv-2895	RACHEL FRIEDSTAT v. SARAH E. CONRAD and LUNKER, INC., d/b/a THE CLUB	Jeffrey A. Springer Matthew M. Holycross Michael J. Knauf Heather A. Salg
10-cv-2977	KYLE MERLIN GILMAN v. LOOMIS ARMORED US, LLC.	Donald L. Salem Christopher M. Leh Katherine S. Dix
10-cv-3030	CATHERINE FUSHIMI v. COLORADO STATE EMPLOYEES CREDIT UNION	Patricia A. Thatcher Darin L. Mackender
10-cv-3163	ELIZABETH FREDERICK v. METROPOLITAN STATE COLLEGE BOARD OF TRUSTEES	David A. Lane Sara J. Rich Christine K. Wilkinson Alison F. Kyles
11-cv-371	KAREN RAE SMITH v. LARRY HALEM	Joshua Maximon Scot W. Greenwood
11-cv-404	PATRICIA A. JACKSON v. COLORADO ACADEMY	Hugh S. Pixler Joe L. Silver
11-cv-577	ERIN WILLIAMS v. M&R SALES AND SERVICE, INC.	Matthew M. Holycross Thomas H. Blomstrom C. Michael Montgomery

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch**

Date: March 14, 2012
Courtroom Deputy: J. Chris Smith
FTR Technician: Kathy Terasaki

Civil Action No. 10-cv-01895-RPM

FRANK AGAZIO,
JULIA AGAZIO and
MARIA AGAZIO,
a minor, by and through her next friends Frank and Julia Agazio,

Jay W. Swearingen

Plaintiffs,

v.

COMMERCE CITY COLORADO,
COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746),
in her official and individual capacity and
COMMERCE CITY POLICE OFFICER KENDALL GROVE (CC1088),
in his official and individual capacity,

Steven J. Dawes

Defendants.

COURTROOM MINUTES

Hearing on Pending Motions

10:00 a.m. Court in session.

Plaintiffs present.

Court's preliminary remarks and advises counsel that for purposes of this hearing and the law it is considering the dog as personal property and the 1983 claim as a Fourth Amendment violation.

Mr. Swearingen states plaintiffs contend the dog is joint ownership among the plaintiffs.

Discussion between court and Mr. Swearingen regarding excessive force claim.

10:05 a.m. Argument by Mr. Dawes.
10:13 a.m. Argument by Mr. Swearingen.
10:26 a.m. Rebuttal argument by Mr. Dawes.

March 14, 2012
10-cv-01895-RPM

Court makes oral findings of fact and conclusions of law as stated on record.

ORDERED: Defendants' Motion to Dismiss and in the Alternative Motion for Summary Judgment [31], is denied as to Officer Barber with respect to the First Claim for Relief considered as a Fourth Amendment violation and claim for qualified immunity and granted with respect to the tort claims. Defendant Commerce City's claim that plaintiffs failed to show a policy that the city violated that constituted an injury due to the loss of the dog is granted. Case will proceed forward with respect to the remaining claims against Officer Barber and all other claims against the other defendants are dismissed.
Court finds dog ownership is joint among the two adult plaintiffs.

Defendants' Motions to Strike Exhibits [47], is terminated.

Discussion regarding scheduling.

ORDERED: Pretrial conference set April 20, 2012 at 2:00 p.m.

10:32 a.m. Court in recess.

Hearing concluded. Total time: 32 min.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 10-cv-01895-RPM

FRANK AGAZIO,
JULIA AGAZIO,
MARIA AGAZIO, a minor, by and through her next friends Frank and Julia Agazio,

Plaintiffs,

v.

COMMERCE CITY, COLORADO,
COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746), in her official
and individual capacity,
COMMERCE CITY POLICE OFFICER KENDALL GROVE (CC1088), in his official and
individual capacity,

Defendants.

ORDER ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Pursuant to the papers filed supporting and opposing the defendants' motion for summary judgment filed September 15, 2011, and the oral argument heard today, and the Court having granted the defendants' motion to strike exhibits attached to the plaintiffs' response brief, excepting for the statement of Richard Hage that he saw Officer Barber's gun drawn, and upon the Court's findings made orally at the hearing that the plaintiffs have shown sufficient support for challenging the credibility of Suzanne Barber with respect to this incident and that Suzanne Barber is the only person witnessing the events leading to the shooting of the plaintiffs' dog, there is a triable issue as to whether she was confronted with a threat to her safety such that the use of lethal force was a reasonable response. Therefore, her claim of qualified immunity is denied. The plaintiffs have failed to show evidentiary support for a claim of a violation of

a municipal policy of Commerce City, Colorado, causing their loss of property, and the plaintiffs have failed to show sufficient evidentiary support to find that the conduct of the Officers Barber and Grove constituted willful and wanton conduct. Accordingly, those claims are dismissed under the Colorado Governmental Immunity Act, and the second claim for relief for excessive force is dismissed because it addresses the lethal force against the dog, rather than a person. Accordingly, it is

ORDERED that the defendant Police Officer Suzanne Barber's motion for summary judgment is denied as to the First Claim for Relief and it is

FURTHER ORDERED that the motion for summary judgment by all other defendants is granted and the state law claims against Suzanne Barber are also dismissed.

DATED: March 14th, 2012

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 10-cv-01895-RPM

FRANK AGAZIO,
JULIA AGAZIO,
MARIA AGAZIO, a minor, by and through her next friends Frank and Julia Agazio,

Plaintiffs,

v.

COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746),

Defendant.

ORDER SETTING PRETRIAL CONFERENCE

The Court having determined that a pretrial conference should now be scheduled, it is

ORDERED that a pretrial conference is scheduled for **April 20, 2012, at 2:00 p.m.** in the Conference Room, Second Floor, the Byron White United States Courthouse, 1823 Stout Street, Denver, Colorado. Counsel are directed to comply with the Instructions for Preparation and Submission of Final Pretrial Order which may be found at www.cod.uscourts.gov/judges_frame.htm. The proposed Final Pretrial Order, original only, shall be delivered in paper form directly to chambers by **4:00 p.m.** on **April 12, 2012**. The conference is conducted with lead counsel present in person. No parties or representatives of parties will be permitted to attend.

DATED: March 14th, 2012

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 10-cv-01895-RPM

FRANK AGAZIO,
JULIA AGAZIO,
MARIA AGAZIO, a minor, by and through her next friends Frank and Julia Agazio,

Plaintiffs,

v.

COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746),

Defendant.

ORDER SETTING TRIAL DATE

Pursuant to the pretrial conference today, it is

ORDERED that this matter is set for trial to jury on **July 9, 2012, at 8:30 a.m.**, in Courtroom A, Second Floor, the Byron White United States Courthouse, 1823 Stout Street, Denver, Colorado. Trial procedures may be found at www.cod.uscourts.gov/judges_frame.htm.

DATED: April 20th, 2012

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge

Frank Agazio, Julia Agazio, Maria Agazio, A Minor, By v. Commerce City Police Officer Suzanne Barber (Cc2746)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

June 13, 2012

**FRANK AGAZIO, JULIA AGAZIO, MARIA AGAZIO, A MINOR, BY AND THROUGH HER NEXT FRIENDS FRANK AND JULIA AGAZIO, PLAINTIFFS,
v.
COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746), IN HER INDIVIDUAL CAPACITY,
DEFENDANT.**

The opinion of the court was delivered by: Senior District Judge Richard P. Matsch

ADVISORY RULINGS

The liability issue to be determined at the trial to begin on July 9, 2012, is whether Officer Suzanne Barber violated the plaintiffs' property interest protected by the Fourth Amendment when she shot their family dog "Zoey" without reasonable cause to believe that she was in imminent danger from the dog's attack. At the pre-trial conference on April 20, 2012, counsel were asked to submit briefs as to whether Maria Agazio, a minor, was a proper plaintiff and as to the measure of damages. While these questions would normally be answered at trial, it will help the parties in trial preparation for the Court to advise them now of the Court's views after reviewing the authorities cited in the briefs and the anticipated evidence identified in the summary judgment proceedings.

The Fourth Amendment protects a person's possessory interest in property. While Maria Agazio's minority may preclude her from claiming ownership of the dog, she does have a protectable interest in the possession of it. All three of the plaintiffs share such an interest in a family dog.

The deprivation of the use and benefit of personal property gives rise to a claim for damages measured by the value of the property. When, as here, there is no market value, the plaintiffs may recover the dog's intrinsic value to them. There is no clear Colorado precedent for determining damages for the loss of a family dog. The plaintiffs seek thousands of dollars for emotional distress, pain and suffering and loss of companionship. Unless the plaintiffs can prove that the defendant acted intentionally and with malice directed toward them, personally, they may not recover such damages.

The intrinsic value of the dog does not include their affection for and attachment to Zoey. Value means worth and the worth of a dog to a family may be measured by the cost of acquisition and maintenance of the animal. Those costs are analogous to the loss of investment in other types of personal property for which there is no market.

These rulings are given as a guide for trial preparation. A trial preparation conference will assist counsel and the Court in promoting trial efficiency. Accordingly, it is

ORDERED, that a trial preparation conference will be scheduled. The parties shall submit their proposed jury instructions and suggested voir dire questions three business days before the conference.

BY THE COURT:

Richard P. Matsch, Senior Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 10-cv-01895-RPM

FRANK AGAZIO,
JULIA AGAZIO,
MARIA AGAZIO, a minor, by and through her next friends Frank and Julia Agazio,

Plaintiffs,

v.

COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746), in her individual capacity,

Defendant.

ADVISORY RULINGS

The liability issue to be determined at the trial to begin on July 9, 2012, is whether Officer Suzanne Barber violated the plaintiffs' property interest protected by the Fourth Amendment when she shot their family dog "Zoey" without reasonable cause to believe that she was in imminent danger from the dog's attack. At the pre-trial conference on April 20, 2012, counsel were asked to submit briefs as to whether Maria Agazio, a minor, was a proper plaintiff and as to the measure of damages. While these questions would normally be answered at trial, it will help the parties in trial preparation for the Court to advise them now of the Court's views after reviewing the authorities cited in the briefs and the anticipated evidence identified in the summary judgment proceedings.

The Fourth Amendment protects a person's possessory interest in property. While Maria Agazio's minority may preclude her from claiming ownership of the dog,

she does have a protectable interest in the possession of it. All three of the plaintiffs share such an interest in a family dog.

The deprivation of the use and benefit of personal property gives rise to a claim for damages measured by the value of the property. When, as here, there is no market value, the plaintiffs may recover the dog's intrinsic value to them. There is no clear Colorado precedent for determining damages for the loss of a family dog. The plaintiffs seek thousands of dollars for emotional distress, pain and suffering and loss of companionship. Unless the plaintiffs can prove that the defendant acted intentionally and with malice directed toward them, personally, they may not recover such damages.

The intrinsic value of the dog does not include their affection for and attachment to Zoey. Value means worth and the worth of a dog to a family may be measured by the cost of acquisition and maintenance of the animal. Those costs are analogous to the loss of investment in other types of personal property for which there is no market.

These rulings are given as a guide for trial preparation. A trial preparation conference will assist counsel and the Court in promoting trial efficiency. Accordingly, it is

ORDERED, that a trial preparation conference will be scheduled. The parties shall submit their proposed jury instructions and suggested voir dire questions three business days before the conference.

DATED: June 13th, 2012

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch**

Date: July 9, 2012
Courtroom Deputy: J. Chris Smith
FTR Technician: Kathy Terasaki

Civil Action No. 10-cv-01895-RPM

FRANK AGAZIO,
JULIA AGAZIO and
MARIA AGAZIO,
a minor , by and through her next friends Frank and Julia Agazio,

Plaintiffs,

Jay W. Swearingen
Jennifer R. Edwards
Juliet R. Piccone

v.

COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746),
in her individual capacity,

Defendant.

Steven J. Dawes
Kate L. McDonald

COURTROOM MINUTES

Trial to Jury Day One

8:17 a.m. Court in session.

Plaintiffs Frank, Julia and Maria Agazio and Defendant Suzanne Barber are present.

Court's preliminary remarks.

Argument by Ms. Swearingen.

ORDERED: Motion to Quash Service of Subpoenas or in the Alternative Motion to Bar Testimony from Rene Bullock and Debra Bullock [75], is granted.

ORDERED: Motion to Strike Plaintiffs' Supplemental Disclosures and to Bar Testimony of Witnesses and Introduction of Documents [76], is granted in part and denied in part as stated on record.

Discussion regarding witnesses.
Court states its trial practices.

8:30 a.m. Court in recess.
8:20 a.m. Court in session.

July 9, 2012
10-cv-01895-RPM

8:44 a.m. Jurors present.

Court's preliminary remarks to jurors.

Statement of the case read to jurors by the Court.

All jurors sworn for voir dire.

Eighteen jurors called to the jury box.

Court voir dices jurors.

Court excuses for cause juror:

100225991

10:36 a.m. to 10:39 a.m. **Bench conference:** defendant's motion to strike juror 100237804 for cause by Mr. Dawes is denied. Counsel pass jurors for cause.

Plaintiffs' challenges:

100239821
100240248
100220286

Defendant's challenges:

100237804
100224478
100240248

Twelve jurors selected to try the case:

100234444
100200870
100206626
100233440
100229707
100223445
100218069
100237936
100223046
100217765
100213338
100203002

July 9, 2012
10-cv-01895-RPM

Court instructs jurors.
Jurors excused.

10:55 a.m. Court in recess.
11:15 a.m. Court in session.

Jurors present.
Twelve jurors sworn to try the case.

11:20 a.m. Plaintiffs' opening statement by Ms. Edwards.

11:33 a.m. Defendant's opening statement by Mr. Dawes.

Court instructs jurors.

11:43 p.m. Plaintiff Frank Agazio sworn.

Direct examination of Mr. Agazio by Mr. Swearingen.

Plaintiffs' Exhibit 21 identified, stipulated, offered and received.

Plaintiffs' Exhibit 22 identified and offered.

11:55 a.m. to 11:56 a.m. Mr. Dawes voir dres Mr. Agazio regarding Plaintiffs' Exhibit 22.

Plaintiffs' Exhibit 22 received.

Court instructs jurors.
Jurors excused.

12:00 p.m. Court in recess.
1:15 p.m. Court in session.

Jurors present.

1:17 p.m. Continued direct examination of Mr. Agazio by Mr. Swearingen.

Plaintiffs' Exhibits 24, 29 and 20 identified, offered and received.

Reference to Plaintiffs' Exhibit 22.

1:54 p.m. Cross examination of Mr. Agazio by Mr. Dawes.

Defendant's Exhibit G identified, offered and received.

2:15 p.m. Redirect examination of Mr. Agazio by Mr. Swearingen.

2:22 p.m. Plaintiff Maria Agazio sworn.

Direct examination of Maria Agazio by Mr. Swearingen.

July 9, 2012
10-cv-01895-RPM

Reference to Plaintiffs' Exhibit 20 and 24.

2:48 p.m. Cross examination of Maria Agazio by Mr. Dawes.

Reference to the May 25, 2011 deposition transcript of Maria Agazio.
Reference to Plaintiffs' Exhibit 20.
Reference to Defendant's Exhibit G.

3:10 p.m. Redirect examination of Maria Agazio by Mr. Swearingen.

Reference to Plaintiffs' Exhibit 22.

Court instructs jurors.
Jurors excused.

3:15 p.m. Court in recess.
3:30 p.m. Court in session.

Jurors present.

3:32 p.m. Plaintiff Julia Agazio sworn.

Direct examination of Julia Agazio by Mr. Swearingen.

Plaintiffs' Exhibit 12 identified, offered and defendant's **objection sustained**.
Plaintiffs' request to play a 911 call audiotape and defendant's **objection sustained**.

4:08 p.m. Cross examination of Julia Agazio by Mr. Dawes.

Reference to the May 25, 2011 deposition transcript of Julia Agazio.

4:22 p.m. Redirect examination of Julia Agazio by Mr. Swearingen.

Court instructs jurors.
Jurors excused until 9:00 a.m. July 10, 2012.

Argument by Mr. Swearingen in support of request to play 911 call audiotape.
Court states plaintiffs' request for an adverse inference instruction is denied.
Mr. Dawes answers questions asked by the Court regarding examination of the dog.

Discussion regarding scheduling.

4:35 p.m. Court in recess.

Clerk's Note: Redacted Strike Sheet attached.

Trial continued. Total time: 7 hrs. 3 min.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Frank Agazio, et. al.

vs.

Case No. : **10-cv-01895-RPM**

Commerce City Police Department Suzanne Barber

	Juror Number	Juror Name	Plaintiff Challenge	Defendant Challenge	
1.	100224478			A 2	1.
2.	100239821		P 1		2.
3.	100234444				3.
4.	100200870				4.
5.	100220286		P 3		5.
6.	100206626				6.
7.	100233440				7.
8.	100229707				8.
9.	100223445				9.
10.	100218069				10.
11.	100237804			A 1	11.
12.	100237936				12.
13.	100223046				13.
14.	100217765				14.
15.	100213338				15.
16.	100234859			D 3	16.
17.	100203002				17.
18.	100240248		P 2		18.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 11 2012

GREGORY C. LANGHAM
CLERK

Civil Case No. 10-cv-01895-RPM

FRANK AGAZIO,
JULIA AGAZIO and
MARIA AGAZIO,
a minor , by and through her next friends Frank and Julia Agazio,

Plaintiffs,

v.

COMMERCE CITY POLICE OFFICER SUZANNE BARBER (CC2746),
in her individual capacity,


Defendant.

STIPULATION AND ORDER REGARDING
CUSTODY OF EXHIBITS AND DEPOSITIONS

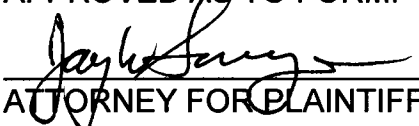
IT IS STIPULATED AND ORDERED that at the conclusion of the trial which began on July 9, 2012, counsel for the parties shall retain custody of their respective exhibits and depositions until such time as all need for the exhibits and depositions has terminated and the time to appeal has expired or all appellate proceedings have been terminated plus sixty days.

DATED at Denver, Colorado this 11th day of July, 2012.

BY THE COURT:


Richard P. Matsch, Judge
United States District Court

APPROVED AS TO FORM:


ATTORNEY FOR PLAINTIFFS


ATTORNEY FOR DEFENDANT